

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

RUFINO MUNIZ,

Plaintiff,

Civil Action No. 1:24-cv-543

v

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

WILLIAM FARNSWORTH,
MACKIE TRANSPORTATION INC.,
a foreign corporation,

Defendants.

THE SAM BERNSTEIN LAW FIRM, PLLC
CARA M. KIRKPATRICK (P79699)
Attorney for Plaintiff
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COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, RUFINO MUNIZ, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by CARA M. KIRKPATRICK, and for his cause of action against Defendants, WILLIAM FARNSWORTH, and MACKIE TRANSPORTATION, INC., a foreign corporation, respectfully shows unto this Honorable Court as follows:

JURISDICTIONAL AVERMENTS

1. That Plaintiff, RUFINO MUNIZ, is a resident of the City of Kalamazoo, County of Kalamazoo, State of Michigan, United States of America.
2. That Defendant, WILLIAM FARNSWORTH, is a resident of the City of

Peterborough, Province of Ontario, Canada.

3. That Defendant, MACKIE TRANSPORTATION, INC., is a Canadian corporation, doing business and conducting its affairs in the State of Michigan, and whose corporate address is 290 Cordova Road, Oshawa, Ontario, Canada, L1J1N9.

4. That all the acts, transactions and occurrences arose in the County of Kalamazoo, State of Michigan which is located within the Western District of Michigan.

5. That the amount in controversy in this litigation exceeds the sum of Seventy-Five Thousand (\$75,000.00) Dollars exclusive of costs, interest and attorney fees.

6. That jurisdiction is properly vested with this Honorable Court pursuant to 28 USC § 1332(a)(2).

COUNT I – NEGLIGENCE AND OWNER’S LIABILITY

7. That on or about the 6th day of December, 2022, Plaintiff RUFINO MUNIZ, was a restrained passenger in 2021 Chevrolet, bearing a Michigan license plate number 003921A20, which was being operated in a careful and prudent manner along and upon westbound I-94, in the City of Portage, County of Kalamazoo, State of Michigan.

8. That at the aforementioned place and time, Defendant, WILLIAM FARNSWORTH, was the operator of a 2023 Peterbuilt semi-truck bearing Ontario license plate number PA63808, which commercial motor vehicle was being driven with permission by Defendant WILLIAM FARNSWORTH in a careless, reckless and grossly negligent manner when Defendant, WILLIAM FARNSWORTH, did operate his vehicle at an unsafe speed, did fail to keep a proper lookout of persons and vehicles, did fail to yield, did drive carelessly,

recklessly and negligently, thereby striking the vehicle your Plaintiff was riding with violent force, causing serious and permanent injuries of your Plaintiff, as hereinafter alleged.

9. That it then and there became and was the duty of Defendant, WILLIAM FARNSWORTH, to drive said motor vehicle with due care and caution in accordance with the statutes of the State of Michigan, the rules of the common law applicable to the operation of commercial and private motor vehicles and the applicable Federal Motor Carrier Safety Regulations but that notwithstanding said duties, your Defendant, WILLIAM FARNSWORTH, did breach and violate the same in one or more of the following particulars:

- a. Driving said motor vehicle on the highway at a speed greater than would permit him to bring it to a stop within the assured clear distance ahead, contrary to the provisions of MCL 257.627;
- b. Failing to yield;
- c. Failing to drive said motor vehicle on the highway at a careful and prudent speed, not greater than was reasonable and proper, having due regard to the traffic, surface and width of the highway and other conditions then and there existing as required by MCL 257.627;
- d. Failing to keep a proper or any lookout for traffic when Defendant knew or should have known that such failure would endanger the life and limb of other persons along and upon said highway;
- e. Driving a vehicle on a highway recklessly, with gross negligence and with wilful or wanton disregard for the safety of others in violation of MCL 257.626 et. seq.
- f. Failure to stop in an assured clear distance;
- g. Driving left of center and failing to drive said motor vehicle upon the right half of the roadway as required by MCL 257.634;
- h. Operated said vehicle while intoxicated and/or under the influence of intoxicating liquor with driving ability impaired, in violation of MCL 257.625;

- i. Failing to give audible warning of the approach or presence of said motor vehicle when reasonably necessary to insure its safe operation as required by MCL 257.706;
- j. Operating while reading, typing or sending a text message in violation of MCL 257.602(b);
- k. Failing to have said automobile equipped with brakes adequate to control its movement and stop and hold it as required by MCL 257.705 or in the alternative, failing to use said equipment;
- l. In failing to keep said vehicle under control at all times relevant to this matter;
- m. Violations of the Federal Motor Carrier Safety Regulations and Statutes, particularly those contained with Title 49 of the Code of Federal Regulation, and those adopted by MCL 480.11a;
- n. Negligence *Per Se*;
- o. In otherwise negligently failing to exert that degree of care, caution, diligence and prudence as would be demonstrated by a reasonably prudent person under the same or similar circumstances and in otherwise causing the injuries and damages to your Plaintiff as hereinafter alleged; and
- p. In other manners as yet unknown to Plaintiff but which will become known during the course of discovery.

10. That Defendant, MACKIE TRANSPORTATION, INC., is vicariously liable for the negligent acts and/or omissions of Defendant, WILLIAM FARNSWORTH, by virtue of the terms of the applicable Owners Liability Statute including MCL 257.401.

11. That as a direct and proximate result of the negligent acts and/or omissions on the part of Defendants, WILLIAM FARNSWORTH and MACKIE TRANSPORTATION, INC., your Plaintiff RUFINO MUNIZ, was caused to suffer extreme, horrendous and violent personal injuries, including but not limited to the following:

- a. Injuries to and about the entire back, including but not limited to, lumbar radiculopathy, L5-S1 disc bulges with superimposed protrusion resulting in very mild posterior displacement of the descending right S1 nerve root, interval development of mild anterior wedging at T12, and sequelae;
- b. Injuries to and about the entire musculo-skeletal system and sequelae;
- c. Any and all other manners of internal and external injuries;
- d. Pain, suffering, discomfort, disability, and extreme physical and emotional suffering;
- e. Severe and continuing embarrassment, humiliation, anxiety, tension and mortification;
- f. Loss of the natural enjoyments of life;
- g. Aggravation of pre-existing conditions; and
- h. Loss of excess wages.
- i. Damages in excess of the Michigan No-Fault Act.
- j. Other damages which are not yet known but will become known through the course of discovery.
- k. Exemplary and/or punitive damages based on a conscious indifference and reckless disregard for the safety of the decedent, his family and the public.

12. That the reckless, careless and grossly negligent actions of all Defendants caused your Plaintiff, RUFINO MUNIZ to suffer all of the damages as set forth above in Count I of this Complaint.

WHEREFORE, Plaintiff, RUFINO MUNIZ, prays that this Honorable Court award him damages against Defendants, WILLIAM FARNSWORTH and MACKIE TRANSPORTATION, INC., in whatever amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars to which it

is found to be entitled to receive, together with costs, interest and attorney fees.

COUNT II – VICARIOUS LIABILITY

NOW COMES the Plaintiff, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by CARA M. KIRKPATRICK, and for his cause of action against Defendant, MACKIE TRANSPORTATION, INC., respectfully shows unto this Honorable Court as follows:

13. That Plaintiff hereby adopts and incorporates by reference each and every allegation contained in the Jurisdictional Averments and in COUNT I of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

14. That, upon information and belief, Defendant, MACKIE TRANSPORTATION, INC., were/was, at all times relevant to this action, the employer/manager/director of Defendant, WILLIAM FARNSWORTH, who was at all times under Defendant MACKIE TRANSPORTATION, INC., direct supervision, employ, and control when he committed the wrongful and/or negligent act specifically alleged herein.

15. Upon information and belief, Defendant WILLIAM FARNSWORTH engaged in the wrongful and/or negligent conduct alleged herein while acting in the course and scope of his employment with Defendant, MACKIE TRANSPORTATION, INC., and, therefore, MACKIE TRANSPORTATION, INC., is liable for the wrongful conduct of Defendant WILLIAM FARNSWORTH under the law of vicarious liability and the doctrine of Respondeat Superior.

WHEREFORE, Plaintiff prays that this Honorable Court award him damages against MACKIE TRANSPORTATION, INC., in whatever amount in excess of Seventy-Five Thousand (\$75,000) Dollars to which he is found to be entitled to receive, together with costs, interest, and attorney fees.

COUNT III – NEGLIGENT ENTRUSTMENT

NOW COMES the Plaintiff, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by CARA M. KIRKPATRICK, and for his cause of action against Defendant, MACKIE TRANSPORTATION, INC., respectfully shows unto this Honorable Court as follows:

16. That Plaintiff hereby adopts and incorporates by reference each and every allegation contained in the previous counts and averments of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

17. That on or about the 6th day of December, 2022, it was the duty of Defendant, MACKIE TRANSPORTATION, INC., to exercise due care and caution in the entrustment of its motor vehicle, so as not to entrust the use of such motor vehicle to a driver that said Defendant knew or had reason to know was likely to drive such motor vehicle in a careless, reckless or grossly negligent fashion.

18. That on the aforementioned date, Defendant, MACKIE TRANSPORTATION, INC., knew or should have known that Defendant, WILLIAM FARNSWORTH'S work and/or driving habits included negligent driving and an indifference to policy, procedure and/or traffic laws.

19. Notwithstanding that, Defendant, MACKIE TRANSPORTATION, INC., knew or had reason to know of the poor work record, poor driving habits and/or indifference to the commercial vehicle rules and regulations of Defendant, WILLIAM FARNSWORTH, and nevertheless did entrust said motor vehicle to his use.

20. Thereafter, Defendant WILLIAM FARNSWORTH did drive such motor vehicle in a careless, reckless and grossly negligent fashion as set forth in COUNT I of this Complaint, causing all such injuries, damages and losses to Plaintiff RUFINO MUNIZ, as set forth in

COUNT I of this Complaint.

WHEREFORE, Plaintiff prays that this Honorable Court award him damages against Defendant, MACKIE TRANSPORTATION, INC., in whatever amount in excess of Seventy-Five Thousand (\$75,000.00) Dollars to which he is found to be entitled to receive, together with costs, interest and attorney fees.

Cara M. Kirkpatrick

CARA M. KIRKPATRICK (P79699)

THE SAM BERNSTEIN LAW FIRM

Attorney for Plaintiff

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Dated: May 24, 2024

**IN THE UNITED STATES DISTRICT COURT
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RUFINO MUNIZ,

Plaintiff,

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JURY DEMAND

NOW COMES the Plaintiff, RUFINO MUNIZ, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by CARA M. KIRKPATRICK, and hereby respectfully demands a trial by jury in the above-entitled cause of action.

Cara M. Kirkpatrick
CARA M. KIRKPATRICK (P79699)
THE SAM BERNSTEIN LAW FIRM
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Dated: May 24, 2024